IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 834 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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NATIONAL INSURANCE CO. LTD. - Appellant(s)
Versus
ABDUL ALIYAS & 4 - Defendant(s)

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Appearance :
MR RAJNI H MEHTA for Appellant(s) : 1,
None for Defendant(s) : 1 - 4.
MRS SANGEETA N PAHWA for Defendant(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 18/07/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal (Main), Rajkot passed in M.A.C.P. No. 471 of 1981 dated 26.11.84.

2. The original applicants who are the heirs and legal representatives of deceased Habib Aliyas Momaiya filed a claim petition claiming Rs. 75,000/- towards compensation for the accident which occurred on 25.11.80 while the deceased who was working as a cleaner was travelling in

the truck no. GTZ 9552 being driven by original opponent no.1. The truck was being driven rashly and negligently and therefore the deceased was thrown off and sustained severe injuries. The deceased was taken to the hospital where he was declared dead. The Tribunal after hearing the parties passed the aforesaid award.

3. Learned Advocate for the appellant has submitted that the Tribunal has committed an error in not considering the fact that the original opponent no.2 had entered into agreement to purchase the vehicle on 08.09.90. He has further submitted that the Tribunal ought not to have made the appellant liable to satisfy the claim.

4. Heard learned Advocates for the parties and perused the documents placed on record. The issue involved in this appeal is squarely covered by a decision of the Apex Court in the case of ***"G. Govindan Vs. New India Assurance Co. Ltd. And Others"*** reported in 1999 A.C.J. 781.

4.1 In that case, the transferee had purchased the bus from the transferor, but, intimation of the same was not given to the insurer as required u/s. 103-A of the Act. The Claims Tribunal recorded a finding that after the date of the accident and knowing that the transferor had

sold the bus in question to the transferee, the insurer had received the premium for the subsequent periods. The Apex Court, after considering the facts of the case, held that a victim or the legal representatives of the victim could not be denied compensation by the insurer on the ground that the policy was not transferred in the name of the transferee.

4.2 In the case on hand, the Tribunal after perusing the documents has concluded that though the parties had entered into agreement to purchase the vehicle on 08.09.80 and the accident had taken place on 25.11.80, the remaining payments were made between 09.02.81 to 20.08.81. Moreover, the last writing at Ex. 62 clearly shows that now the original opponent no.2 becomes the owner of the vehicle with effect from 20.08.1981 which is after the date of accident. Therefore, the factum of “transfer' has not been established.

Further, the Tribunal in para 23 has observed as under:

> “When once this Tribunal reaches to the conclusion that Ex. 56 is the agreement of Hire Purchase, it become clear that it would not create the contractual relationship or a contract of sale within the meaning of Sec. 2115, 2113 and Sec. 30(3) of the Sale of Goods Act, but would amount to a bailment and the property in the goods would remain in the owner during the continuance of the bailment or the hire-purchase agreement. In view of this position, it becomes clear that the opponent no.4 Parbat Sajan Odedara had remained the owner of the vehicle throughout and that the opponent

> no. 2 had not become the owner of the vehicle. Because of this position, the contention raised by the insurer would not survive."

I am in complete agreement with the reasonings given by and the findings arrived at by the Tribunal, and hence, find no reason to interfere in this appeal. Hence, the appeal deserves to be dismissed.

5. In the result, the appeal stands dismissed. No order as to costs.

(K.S. JHAVERI, J.)

Divya//